



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R8–ES–2018–N002; FXES11140800000–178–FF08ECAR00]**

**Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Proposed Low-Effect Habitat Conservation Plan for the Coastal California Gnatcatcher and Associated Documents; Santee, California**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from Calvary Church Santee for a 3-year incidental take permit for the threatened coastal California gnatcatcher pursuant to the Endangered Species Act, as amended. We are requesting comments on the permit application and on our preliminary determination that the applicant's accompanying proposed habitat conservation plan (HCP) qualifies as low effect, eligible for a categorical exclusion under the

National Environmental Policy Act. The basis for this determination is discussed in our environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

**DATES:** Written comments should be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES: *Submitting Comments:*** You may submit comments by one of the following methods:

- *U.S. Mail:* Field Supervisor, Fish and Wildlife Service, Carlsbad  
Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad,  
CA 92008.
- *Fax:* Field Supervisor, 760–431–9624.
- *Email:* fw8cfwocomments@fws.gov; please include “Calvary  
Chapel Santee HCP” in the subject line.

*Obtaining Documents:* You may obtain copies of the proposed HCP and EAS on the Carlsbad Fish and Wildlife’s website at

[https://www.fws.gov/carlsbad/HCPs/HCP\\_Docs.html](https://www.fws.gov/carlsbad/HCPs/HCP_Docs.html). To request copies of the application, proposed HCP, and EAS, contact the Service by telephone at 760–431–9440 or by letter to the Carlsbad Fish and Wildlife Office (see above). Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760–431–9440. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service (FRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Calvary Church Santee (applicant) for a 3-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; ESA). The application addresses the potential “take” of the threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher) in the course of activities associated with expansion of the existing facilities at the Calvary Chapel Santee, in the City of Santee, San Diego County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the applicant’s proposed habitat conservation plan (HCP).

We are requesting comments on the permit application and on our preliminary determination that the proposed HCP qualifies as a low-effect HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*; NEPA). The basis for this determination is discussed in our EAS and associated low-effect screening form, which are also available for public review.

## **Background**

Section 9 of the ESA and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. “Take” is defined under the ESA as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [listed animal species], or to attempt to engage in such conduct” (16 U.S.C. 1538). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed species. “Incidental taking” is defined by the ESA implementing regulations as taking that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3). Regulations governing incidental take permits for endangered and threatened species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

### **Applicant’s Proposed Project**

The project is located on a 3.38-acre property in the City of Santee in San Diego County, California. The applicant requests a 3-year permit under section 10(a)(1)(B) of the ESA. If we approve the permit, the applicant anticipates taking gnatcatcher as a result of permanent impacts to 1.16 acres (ac) of coastal sage scrub habitat that the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant’s activities associated with removal of a modular building and construction of an assembly building in the City of Santee, California, and includes conservation and in-perpetuity management of 1.76 ac of gnatcatcher

habitat off site.

To minimize take of coastal California gnatcatcher by the Calvary Chapel Santee project and to offset impacts to its habitat, the applicant proposes to mitigate for permanent impacts to 1.16 ac of occupied gnatcatcher coastal sage scrub habitat through the conservation and in-perpetuity management of 1.76 ac of coastal sage scrub occupied by the gnatcatcher. The applicant's proposed HCP also contains the following proposed measures to minimize the effects of construction activities on the gnatcatcher:

- Prior to the initiation of work activities on the project sites, grading limits will be clearly delineated with flagging and/or temporary fencing and silt fencing, as necessary, to help guide work activities and avoid impacts to areas beyond the project boundaries.
- Prior to the initiation of work activities on the project sites, a Service-approved biologist will conduct a brief training session for all project personnel regarding the conservation measures and regulations described herein, as well as general information and methods that will help avoid and minimize disturbance to the gnatcatcher in the vicinity of project activities.
- Vegetation clearing will take place outside of the bird nesting season (February 15 through August 31) to the fullest extent practicable. Clearing may only occur during this period once a biologist has conducted surveys of the impact areas for nesting birds within 3 days of work activities. The qualified biologist will document compliance

with applicable State regulations that protect nesting birds. If an active bird nest is observed, a 300-foot buffer must be established, within which no project activities will occur until the nest is no longer active. A reduced buffer may be established with concurrence from the Service and the California Department of Fish and Wildlife if it is deemed appropriate and will not result in the alteration of nesting behaviors.

- Project-related landscaping will not include potentially invasive non-native plants.
- Lighting from the project site will not spill over into adjacent undisturbed native habitat.

### **Proposed Action and Alternatives**

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the gnatcatcher. If we approve the permit, take of gnatcatcher would be authorized for the applicant's activities associated with the construction of the Calvary Chapel Santee project. In the proposed HCP, the applicant considers the No Action Alternative. Under the No Action Alternative, no incidental take of coastal California gnatcatcher resulting from habitat modification would occur, and no long-term protection and management would be afforded to the species. The No Action Alternative would not meet the primary goal of the proposed Project, which is to accommodate the existing church

members and alleviate current overcrowded conditions. The parcel size is too small to accommodate alternate development configurations that would avoid incidental take.

#### Our Preliminary Determination

The Service has made a preliminary determination that approval of the HCP and issuance of an incidental take permit qualify for categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215), and that the HCP qualifies as a low-effect plan as defined by the Habitat Conservation Planning Handbook (December 2016).

We base our determination that a HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

### **Next Steps**

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the ESA by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of gnatcatcher.

### **Public Comments**

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in the **ADDRESSES** section.

### **Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your

entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **Authority**

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

**G. Mendel Stewart,**

*Field Supervisor,*

*Carlsbad Fish and Wildlife Office,*

*Carlsbad, California.*

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